DATE: November 21, 2003
TO: School Food Authorities

SP 2004-01

FROM: Julia Thorius, Chief

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Bureau of Food and Nutrition

SUBJECT: Competitive Foods-memorandum reissued

USDA defines competitive foods as foods sold in competition with USDA school meal programs—school lunch, school breakfast, and afterschool care snack programs in "food service areas" during meal periods. Local boards of education and School Food Authorities (SFAs) are encouraged to consider developing more restrictive policies on the sale of and income from all foods sold at any time throughout a district. The sale of other competitive foods can have a significant impact on the School Food Service Account. These other competitive foods range from second servings of foods that are part of the reimbursable school meal to foods that students purchase in addition to or in place of a reimbursable school meal, such as a la carte sales and other food and beverages purchased from vending machines, school stores, and snack bars.

# **Definition of Competitive Foods**

There are two categories of competitive foods:

<u>Foods of minimum nutritional value (FMNV)</u>. All categories of food of minimal nutritional value can be found in Appendix B of the regulations for the National School Lunch Program. Categories of foods include:

- a) Soda water (carbonated beverages/pop),
- b) Water ices (popsicles),
- c) Chewing gum,
- d) Hard candies such as sour balls, fruit balls, candy sticks, lollipops, starlight mints, after dinner mints, sugar wafers, rock candy, cinnamon candies, breath mints, jaw breakers,
- e) Jellies and gums such as gum drops, fruit flavored slices,
- f) Marshmallow candies,
- g) Fondant candies such as corn candy or soft mints,
- h) Licorice.
- i) Spun candy such as cotton candy, and
- j) Candy coated popcorn.

Current regulations prohibit the sale of FMNV in the "food service/eating areas" during the school meal periods. The regulations do not prohibit their sale outside the school food service/eating area at any time during the school day.

<u>All other food offered for individual sale</u>. USDA regulations do not prohibit the sale of other foods offered for individual sale at any time during the school day anywhere on the school campus, including the school "food service/eating areas".

The sale of <u>competitive foods</u>, that is, any food sold in competition with the Child Nutrition Program to children in "food service areas" during the meal service period, may be allowed only if all income from the sale of such food accrues to the benefit of the nonprofit School Food Service Account or the school or student organizations approved by the school. (7CFR 210.11 (b)) FMNV may not be sold at anytime in the "food service/eating area" during the school meals periods.

#### **Additional information on FMNV:**

# Why are FMNV prohibited in the School Meals Programs?

Section 10 (a) of the Child Nutrition Act of 1966 directs USDA to issue regulations governing the service of foods "in competition with" meal programs authorized under the National School Lunch Program (NSLP) and School Breakfast Program (SBP).

The regulations implementing the requirement on FMNV are found in Section 210.11 of the NSLP regulations and Section 220.12 of the SBP regulations. SFAs must not provide access to FMNV during student meal periods in "food service areas". Allowing access to FMNV violates the statute and regulations as well as the commitment to nutrition in authorizing legislation.

How do State Agencies (SAs) assess compliance with the rules pertaining to FMNV? SAs are required by USDA to aggressively enforce the prohibitions on FMNV. There are three areas that SAs must assess in order to determine if the SFA is complying with the requirements for FMNV. These are: the "food service area"/meal period, access to FMNV, and the use of funds in the nonprofit School Food Service Account.

## 1. "Food service area"/meal period

The term "food service area" refers to any area on school premises where program meals are both served and eaten as well as any areas in which program meals are either served or eaten. "Eating areas" that are completely separate from the "serving lines" are clearly part of the "food service area". Schools may not design their "food service area" to encourage or facilitate the choice or purchase of FMNV as a ready substitute for, or an addition to, program meals. "During meal periods" includes both the time of serving and the time the student spends eating the meal.

#### 2. Access to FMNV

Schools cannot serve or sell FMNV during a meal service period(s) in the area(s) where reimbursable meals are served and/or eaten. The SA is required by regulations to assure that the meal is priced as a unit. As part of the agreement between the SA and SFAs, the SFA agrees to price the reimbursable lunch or breakfast as a unit. Any FMNV provided with a reimbursable meal "at no additional charge" is in fact being "sold" as part of the unit if the FMNV is only available when a reimbursable meal is taken. For example, if students are permitted to choose a FMNV (e.g., caramel corn) with a reimbursable meal, that FMNV is, in effect, being served in competition with the reimbursable meal. Therefore, this practice is prohibited since it introduces access to FMNV in the "food service" area during the meal service period. Further, such arrangements violate the unit price provision in the agreement.

# 3. <u>Use of funds in the SFSA (School Food Service Account)</u>

The third element the SA must assess is how the funds in the SFSA are being used. Costs charged to the nonprofit SFSA must be both necessary and reasonable. The costs of FMNV purchased for service in the "food service area" during meal periods are neither necessary nor reasonable, so they are not allowable costs. In some circumstances, the cost of minor quantities of FMNV used to decorate or enhance a food or menu item is allowable.

If SFSA funds are used to purchase FMNV for sale outside a meal period(s) or outside a "food service area(s)" during meal periods, such purchases must be self-financing. This means that funds must be deposited in the SFSA in an amount sufficient to cover all direct and indirect costs relating to the purchase and service of FMNV with SFSA funds. Records documenting the recovery of these costs must be maintained and available for review.

# Action taken by State Agency when it observes a violation of the rules pertaining to FMNV For violations of the "food service area"/meal period and access requirements:

The SA will exercise the authority provided in Sections 210.11 and 220.12. If a violation is found, this will be documented in writing. The SFA will be required to stop the practice(s) in violation of USDA regulations. The SFA will be required to document in a written corrective action plan submitted to the SA, how the violation will be permanently corrected in this school or throughout the district if applicable. The SA will then make an unannounced follow-up visit within the next year. If violations are found on that day or subsequent visits the SA will disallow reimbursement for all meals served by a school or schools on any day that a violation of the regulations is observed. Additional corrective action will be required by the SFA and there will be further monitoring by the State Agency.

## For violations of the use of the SFSA:

When a SA determines that a SFA has improperly used their SFSA for the purchase and service of FMNV, the SA will require both corrective action and restoration to the SFSA of any SFSA funds used improperly to purchase and serve FMNV.

If you have questions regarding this information, please contact your assigned State Agency consultant or Patti Harding at <a href="mailto:patti.harding@ed.state.ia.us">patti.harding@ed.state.ia.us</a> or 515-281-4754. Additional information on competitive foods can be found on the USDA web site <a href="http://www.fns.usda.gov/cnd/">http://www.fns.usda.gov/cnd/</a> or on the Bureau web site <a href="http://www.state.ia.us/educate/ecese/fn/publications.html">http://www.state.ia.us/educate/ecese/fn/publications.html</a>.